

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
	§	CASE NO. 16-10398-HCM
CLEANFUEL USA, INC.	§	
	§	CHAPTER 11
DEBTOR.	§	

DEBTOR’S MOTION FOR AUTHORITY TO USE CASH COLLATERAL

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

CleanFUEL USA, Inc. (“Debtor” or “CFUSA”) files this Debtor’s Motion for Authority to Use Cash Collateral (the “Motion”) and would show the Court as follows:

Case Background

1. CFUSA filed for relief under Chapter 11 of the United State Bankruptcy Code on April 3, 2016. CFUSA is operating as a debtor-in-possession pursuant to 11 U.S.C. §§1107 and 1108.

2. This Court has jurisdiction over this matter under 28 U.S.C. §1334. This is a core matter pursuant to 28 U.S.C. §157(b)(2)(M).

3. CFUSA is a manufacturer of certified and alternative fuel equipment for propane autogas. CFUSA offers turnkey fuel and refueling infrastructure solutions; propane-powered engine systems and conversions; and fleet management programs. CFUSA is headquartered in Georgetown, Texas, with an engineering division in Wixom, Michigan. CFUSA has approximately 38 employees with a monthly payroll expense of approximately \$280,000.00, inclusive of benefits, taxes, etc. Monthly operating expense is approximately \$118,000.00.

4. CFUSA is indebted to the Ed Rachal Foundation, a Texas non-profit corporation (the "Foundation") pursuant to a series of Loan Transitions, entered into between CFUSA, as borrower, and the Foundation, as lender (the "Loan Transactions") which are:

a) that certain Amended and Restated Loan Agreement dated June 28, 2013 (the "5,500,000.00 Restated Loan Agreement"), amending and restating that certain Loan Agreement dated November 2, 2012, as amended by that certain First Amendment to Loan Agreement dated February 20, 2013, and that certain Second Amendment to Loan Agreement dated May 17, 2013; and that certain Amended and Restated Revolving Credit Note dated June 28, 2013, in an original principle amount of \$5,500,000.00 (the "5,500,000.00 Restated Note") increasing the principal amount of and otherwise amending and restating that certain Revolving Credit Note dated November 2, 2012, as amended by that certain First Amendment to Promissory Note dated February 20, 2013, and that certain Second Amendment to Promissory Note dated May 17, 2013;

b) that certain Amended and Restated Loan Agreement dated March 18, 2014, (the "5,468,400.00 Consolidated Loan Agreement"), consolidating and otherwise amending and restating that certain Loan Agreement dated May 31, 2013, that certain Loan Agreement dated September 27, 2013, and that certain Secured Promissory Note in an original principal amount of \$5,468,400.00 dated March 18, 2014 (the "5,468,400.00 Consolidated Note"), increasing the principal amount of, consolidating and otherwise amending and restating that certain Secured Promissory Note dated May 31, 2013, that certain Secure Promissory Note dated September 27, 2013, and that certain Promissory Note date November 1, 2013;

c) that certain First Amendment to Amended and Restated Loan Agreement dated April 20, 2015, amending the \$5,468,400.00 Loan Agreement (as so amended, the “\$5,468,400.00 Consolidated Loan Agreement”) and that certain First Amendment to Secured Promissory Note dated April 20, 2015, increasing to \$5,968,400.00 the original principal amount and otherwise amending the \$5,468,400.00 Consolidated Note (as so amended, the “5,968,400.00 Consolidated Note”);

d) that certain Promissory Note dated May 1, 2015, in the original principal amount of \$300,000.00 (the “\$300,000.00 Bridge Note”);

e) that certain Promissory Note dated July 28, 2015, in the original principal amount of \$250,000.00 (the \$250,000.00 Bridge Note”); and

f) that certain Secured Advancing Term Loan Agreement dated August 7, 2015, (the “1,290,000.00 Advancing Term Loan Agreement”); and that certain Secured Advancing Term Promissory Note dated August 7, 2015, in original principal amount of up to \$1,290,000.00 (the \$1,290,000.00 Advancing Term Note”), under which the total principal amount advanced to date is \$1,033,036.00.

The total principal balance outstanding under the terms of the Loan Transactions is \$13,051,436.00, and the total accrued interest outstanding is \$3,607,161.00, for a total of \$16,658,597.00. The obligations owed to the Foundation are secured by perfected first lien and security interests in all of the assets of the Debtor (the “Pre-Petition Collateral”), including but not limited to accounts, accounts receivable, equipment, inventory, intellectual property, general intangibles and the proceeds thereof. Proceeds of the

collateral pledged to the Foundation constitute “Cash Collateral” of the Debtor under 11 U.S.C. § 363 (a).

5. CFUSA needs the use of Cash Collateral in order to pay normal and necessary operating expenses in connection with its business in order to preserve and protect the business and the Estate and to avoid immediate and irreparable injury. A proposed budget and cash flow projection for the week of April 4, 2016 (“Budget”), is attached hereto as Exhibit A. Without the use of the Cash Collateral, Debtor will be unable to operate its business and manage its affairs.

6. 11 U.S.C. §363 prevents CFUSA from using the Cash Collateral without the consent of the secured party. The Foundation has consented to the use of its cash collateral conditioned upon it receiving a Court approved and deemed perfected lien against all the same assets that it holds a security interest in and lien against pre-petition and so long as CFUSA operates pursuant to the Budget, unless the Foundation otherwise consents . To the extent there are other valid liens held by other creditors, secured creditors are adequately protected by the continued operation of CFUSA’s business and replacement Cash Collateral generated therefrom.

7. To the extent necessary, and as adequate protection for the use of Cash Collateral by CFUSA, CFUSA proposes to grant a post-petition lien to the Foundation on post-petition assets acquired by the Debtor (the “Post-Petition Collateral”) and all cash collateral generated post-petition, whether from Pre-Petition Collateral or the Post-Petition Collateral.

8. CFUSA requests that this Court authorize the use of Cash Collateral pursuant to 11 U.S.C. §363 and Bankruptcy Rule 1007(d) for ordinary and necessary expenses incurred by CFUSA to operate, maintain, preserve and protect its business and the Estate in the amounts and for the purposes enumerated in the Budget. The use of cash collateral pursuant to the terms of the Budget is in the best interest of the Estate and its creditors. CFUSA has provided notice of

this Motion to the Foundation, any creditor claiming a pre-petition security interest in assets of the Estate, the twenty largest unsecured creditors, and to the United States Trustee in accordance with the Bankruptcy Rules and the Local Rules.

9. Contemporaneously herewith, CFUSA has filed a request for emergency consideration of this motion and related motions as “First day” Motions.

WHEREFORE, PREMISES CONSIDERED, CFUSA respectfully requests that this Court authorize the use of Cash Collateral as herein requested. CFUSA request such other and further relief as it may show itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature above, I hereby certify that on the 6th day of April, 2016, a true and correct copy of the foregoing document was served upon the parties on the attached service list via electronic means as listed on the Court's ECF noticing system or by regular first class mail, postage prepaid.

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